Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990)

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(F)-7 OF 2009(W)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), AUGUSTINE PAUL AND JAMES FOONG FCJJ
20 NOVEMBER 2009

Administrative Law — Judicial review — Application for — Review of appellant's decision to issue notices to enter respondents' land to carry out upgrading works — Interpretation of 'upgrading' in s 13 of the Electricity Supply Act 1990 — Purpose of Act — Whether meaning of upgrading subject to any restriction — Whether fact that upgrading may cause individual hardship relevant consideration — Whether payment of compensation sufficient — Electricity Supply Act 1990 ss 13 & 16 — Interpretation Acts 1948 and 1967 s 17A — Rules of the High Court 1980 O 53 r 1

Statutory Interpretation — Construction of statutes — Public purpose — Whether balance of convenience in favour of public in general must be looked at more widely when purpose of the Act is public purpose — Electricity Supply Act 1990 ss 13 & 16 — Interpretation Acts 1948 and 1967 s 17A

Statutory Interpretation — Construction of statutes — Rules of construction — Principle of noscitur a sociis — Whether 'maintaining', 'repairing' and 'upgrading' under s 13 of the Electricity Supply Act 1990 should be treated in same sense — Electricity Supply Act 1990 ss 13 & 16

The respondents are owners and/or occupiers of respective plots of land ('the land') in a new village situated in Rawang, Selangor. Sometime in 1974, Lembaga Letrik Negara ('LLN') installed steel poles on the land to carry a 33 kV transmission line across the new village, without any objection. Around 2005, the appellant administrative body, which is the successor of LLN, decided to implement a project known as the Central Area Reinforcement Project ('CAR project') to increase the electricity supply to Kuala Lumpur and the Klang Valley. To implement this project a high voltage grid had to be installed and a section of the route for this grid was to run 1.5km through the

new village along the same path as the existing 33 kV transmission line. The respondents as owners or occupiers of the affected land protested against this proposal and urged the appellant to find an alternative route. This request was turned down and the appellant issued a notice pursuant to s 13 of the Electricity Supply Act 1990 ('the Act') to the respondents, informing the latter that the appellants as licensees of the land would be entering upon the land for the purpose of upgrading any licensed installation and would pay the respondents full compensation in accordance with s 16 of the Act to all persons interested for any damage that may be caused thereby. In response the respondents had filed an application in the High Court for a judicial review under O 53 r 3 of the Rules of the High Court 1980 of the appellant's decision to issue notices under s 13 of the Act. The respondents argued that the appellant had intentionally under the guise of upgrading the existing transmission line attempted to enter into the land with the ulterior motive to acquire it and that no compensation was adequate for such acquisition. The High Court agreed that the proposed project fell within the meaning of the word 'upgrading' as found in s 13 of the Act. The respondents appealed and the Court of Appeal reversed the decision of the High Court and granted the respondents an order of certiorari to quash the decision of the appellant. The Court of Appeal came to the conclusion that the degree of upgrading of the existing line should only be limited to 'just tightening of loose screws, repainting the posts, replacing the ageing posts with new but similar type for structure'. The appellant applied for and obtained leave to appeal against that decision. In this appeal this court was required to interpret the word 'upgrading' in s 13 of the Act in determining whether the upgrading work intended to be carried out by the appellant was unsuitable, whether the payment of compensation to the respondents under s 13 read with s 16 of the Act was sufficient and whether there was a breach of art 13 of the Federal Constitution.

Held, allowing the appeal with costs:

(1) (per **Augustine Paul FCJ**) As the meaning of 'upgrading' in s 13 of the Act does not appear to be subject to any limitation or qualification, it may require a wide interpretation that may cause problems and hardship to some. Under s 17A of the Interpretation Acts 1948 and 1967 what must prevail is a construction that will promote the purpose of an Act. The purpose of the Act is, inter alia, to ensure the supply of electricity at reasonable prices to the public at large, which is a public purpose. Where the public interest is involved, the balance of convenience in favour of the public in general must be looked at more widely. Thus, individual hardship that may arise in giving the necessary interpretation to a statutory provision cannot be a relevant matter for consideration. There can be no dispute that the need for electricity

supply would increase from time to time with the rising population and industrial development. Such needs can be met only with changes in the electrical installations which can be even of a major nature. As the meaning of upgrading in s 13 of the Act is not subject to any qualification, the upgrading may go to any extent even though it may cause individual hardship. The result is that any restriction imposed in the meaning to be accorded to the word 'upgrading' in s 13 of the Act will conflict with the purpose of the Act in the supply of electricity to the public (see paras 7–9 & 15).

(2) (per **Augustine Paul FCJ**) It would be observed that all the three words, 'maintaining', 'repairing' and 'upgrading', that appear in s 13 of the Act carry separate and distinct meanings and that therefore they are different from the other. It cannot therefore be said that the meanings of the three words are analogous or similar. The result was that the principle of *noscitur a sociis* had no application in the determination of the meaning of the word 'upgrading' in s 13 of the Act and the three words should not be treated in the same sense. Even if the principle of *noscitur a sociis* applied the resultant restricted meaning to be given to the word 'upgrading' would not have the effect of promoting the purpose underlying the Act. The proposed works are therefore clearly an improvement by the replacement of components and is a raising in rank of the electricity cables and therefore fall within the definition of 'upgrading' in s 13 of the Act (see para 21).

(3) (per **Augustine Paul FCJ**) The appellant had conceded that full compensation as per the terms of the Land Acquisition Act 1960 should be payable to the respondents to the extent of the loss or injury suffered by them. It was also conceded that the affected landowners would be entitled to full compensation of the loss of use of their lands to the extent of the loss pursuant to art 13 of the Federal Constitution (see para 31).

(4) (per **James Foong FCJ,** dissenting) The meaning of 'upgrading' in s 13 of the Act must be a matter of factual determination. In addition the word 'upgrading' in s 13 must be read in the context of the two other purposes in the same section, ie repairing and maintaining. The established principle in the rules of construction *noscitur a sociis* applied and consequently the three words should not be read in isolation but should be treated in the same sense. Further, when one interprets a particular word in a certain section of a legislation, it was imperative to look at the intention of the provision as a whole rather than in isolation. In this instance, the intention of s 13 of the Act was to allow the appellant, as licensee, to enter into the land for the purpose of maintaining, repairing and/or upgrading the licensed installation and not for effecting an entire change to the licensed installation. The

photographs tendered as evidence showed that the proposed structure and the extent of the transmission to be laid across the land were exceedingly extensive as compared to the existing one. Factually the upgrading far exceeded the degree that was acceptable as upgrading within the meaning of s 13 of the Act and thus did not constitute upgrading for the purposes of s 13 of the Act (see paras 51 & 58–59).

(5) (per **James Foong FCJ,** dissenting) Having ruled against the appellant in their decision to issue the notice to the respondents under s 13 of the Act, the question on compensation became irrelevant and academic (see para 65).

[Bahasa Malaysia summary

Responden-responden merupakan pemilik-pemilik dan/atau penghuni-penghuni plot-plot tanah masing-masing ('tanah tersebut') di sebuah kampung baru di Rawang, Selangor. Sekitar tahun 1974, Lembaga Letrik Negara ('LLN') telah memasang tiang besi di atas tanah tersebut untuk menyalurkan 33 kV talian pengaliran merentasi kampung baru itu, tanpa apa-apa bantahan. Sekitar tahun 2005, perayu, sebuah badan pentadbiran, yang merupakan pengganti LLN, telah memutuskan untuk melaksanakan projek yang dikenali sebagai Projek Pengukuhan Kawasan Setempat ('projek PKS') untuk menambah bekalan elektrik ke Kuala Lumpur dan Lembah Klang. Bagi melaksanakan projek ini grid voltan tinggi telah dipasang dan sebahagian daripada perjalanan grid ini merentasi 1.5km kampung baru itu sepanjang jalan yang sama seperti talian pengaliran 33 kV yang sedia ada. Responden-responden sebagai pemilik-pemilik atau penghuni-penghuni tanah yang terjejas itu membantah terhadap cadangan ini dan mendesak perayu untuk mencari jalan alternatif. Permintaan ini ditolak dan perayu telah mengeluarkan notis menurut s 13 Akta Bekalan Elektrik 1990 ('Akta') kepada responden-responden, memaklumkan bahawa perayu-perayu sebagai pemegang-pemegang lesen tanah tersebut akan memasuki tanah tersebut bagi tujuan menaik taraf apa-apa pemasangan berlesen dan akan membayar responden-responden pampasan penuh menurut s 16 Akta kepada semua orang berkepentingan untuk apa-apa kerugian yang mungkin disebabkan oleh kerja-kerja tersebut. Sebagai jawapan responden-responden telah memfailkan permohonan di Mahkamah Tinggi untuk semakan kehakiman di bawa A 53 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980 terhadap keputusan perayu mengeluarkan notis-notis di bawah s 13 Akta. Responden-responden berhujah bahawa perayu dengan sengaja di bawah samaran menaik taraf talian pengaliran yang sedia ada telah cuba untuk memasuki tanah tersebut dengan niat yang tersembunyi untuk memperolehnya dan bahawa tiada jumlah pampasan yang mencukupi untuk pemerolehan sedemikian. Mahkamah Tinggi telah bersetuju bahawa projek yang dicadangkan itu terangkum dalam maksud perkataan 'menaik taraf' seperti dalam s 13 Akta.

Responden-responden telah merayu dan Mahkamah Rayuan telah mengakas keputusan Mahkamah Tinggi dan membenarkan responden-responden perintah certiorari untuk membatalkan keputusan perayu. Mahkamah Rayuan telah membuat kesimpulan bahawa tahap menaik taraf talian sedia ada patut hanya terhad kepada 'just tightening of loose screws, repainting the posts, replacing the ageing posts with new but similar type for structure'. Perayu memohon dan telah memperoleh kebenaran untuk merayu terhadap keputusan tersebut. Dalam rayuan ini mahkamah dikehendaki mentafsirkan perkataan 'menaik taraf' dalam s 13 Akta bagi menentukan sama ada kerja menaik taraf yang ingin dilaksanakan oleh perayu adalah tidak sesuai, sama ada bayaran pampasan kepada responden-responden di bawah s 13 dibaca bersama s 16 Akta adalah mencukupi dan sama ada telah berlaku pelanggaran perkara 13 Perlembagaan Persekutuan.

Diputuskan, membenarkan rayuan dengan kos:

(1) (oleh **Augustine Paul HMP**) Oleh sebab maksud perkataan 'menaik taraf' dalam s 13 Akta tidak dilihat tertakluk kepada apa-apa had atau syarat, ia mungkin memerlukan pentafsiran yang luas yang boleh menyebabkan masalah dan kesukaran kepada pihak-pihak yang tertentu. Di bawah s 17A Akta Tafsiran 1948 dan 1967 apa yang perlu diamalkan adalah pentafsiran yang akan menggalakkan tujuan Akta. Tujuan Akta, antara lain, adalah untuk memastikan bekalan elektrik pada harga berpatutan kepada orang ramai, yang merupakan tujuan awam. Apabila melibatkan kepentingan awam imbangan kesesuaian yang berpihak kepada orang awam secara am hendaklah dilihat dengan lebih meluas. Oleh itu kesusahan individu yang mungkin timbul dalam memberikan pentafsiran yang sepatutnya kepada peruntukan statutori tidak boleh menjadi perkara yang relevan untuk dipertimbangkan. Tidak dipertikaikan bahawa keperluan bekalan elektrik akan bertambah dari masa ke semasa dengan peningkatan bilangan penduduk dan pembangunan perindustrian. Keperluan sedemikian hanya boleh dikecapi dengan perubahan kepada pemasangan elektrik yang mungkin besar peranannya. Memandangkan maksud penaikan taraf dalam s 13 Akta tidak tertakluk kepada apa-apa syarat, penaikan taraf tersebut boleh dilaksanakan meskipun ia mungkin menyebabkan kesusahan kepada individu. Akibat daripada itu apa-apa sekatan yang dikenakan dalam maksud yang selaras dengan perkataan 'menaik taraf' dalam s 13 Akta akan bercanggah dengan tujuan Akta berhubung bekalan elektrik kepada orang awam (lihat perenggan 7–9 & 15).

(2) (oleh **Augustine Paul HMP**) Perlu diteliti bahawa ketiga-tiga perkataan, 'maintaining', 'repairing' dan 'upgrading', dalam s 13 Akta membawa maksud yang berasingan dan berbeza dan dengan itu adalah

berbeza antara satu sama lain. Oleh demikian tidak boleh dikatakan bahawa maksud ketiga-tiga perkataan itu adalah seakan-akan atau sama. Akibatnya adalah bahawa prinsip *noscitur a sociis* tidak terpakai untuk menentukan maksud perkataan 'menaik taraf' dalam s 13 Akta dan ketiga-tiga perkataan tersebut tidak patut dianggap mempunyai maksud yang sama. Meskipun prinsip *noscitur a sociis* adalah terpakai maksud hasilan terbatas yang diberikan kepada perkataan 'menaik taraf' tidak memberi kesan untuk menggalakkan tujuan yang menjadi dasar Akta. Kerja-kerja yang dicadangkan dengan itu jelas merupakan penambahbaikan dengan penggantian komponen-komponen dan menaik taraf kabel-kabel elektrik dan oleh itu terangkum di bawah definisi 'menaik taraf' dalam s 13 Akta (lihat perenggan 21).

(3) (oleh **Augustine Paul HMP**) Perayu telah mengaku bahawa pampasan penuh seperti dalam terma Akta Pemerolehan Tanah 1960 patut dibayar kepada responden-responden setakat mana kerugian atau kerosakan dialami oleh mereka. Ia juga diakui bahawa pemilik-pemilik tanah yang terjejas berhak kepada pampasan penuh terhadap kerugian penggunaan tanah mereka setakat mana kerugian itu menurut perkara 13 Perlembagaan Persekutuan (lihat perenggan 31).

(4) (oleh **James Foong HMP,** menentang) Maksud 'menaik taraf' dalam s 13 Akta merupakan penentuan perkara faktual. Tambahan pula perkataan 'menaik taraf' dalam s 13 hendaklah dibaca dalam konteks dua tujuan yang lain dalam seksyen yang sama, iaitu membaiki dan menyenggara. Prinsip yang ditetapkan dalam rukun pentafsiran *noncitur a sociis* terpakai dan oleh itu ketiga-tiga perkataan tersebut tidak patut dibaca secara berasingan tetapi harus dianggap mempunyai sifat yang sama. Selanjutnya, apabila seseorang mentafsir perkataan tertentu dalam seksyen tertentu perundangan, adalah penting untuk melihat kepada niat peruntukan itu secara keseluruhan dan bukan secara berasingan. Di sini, niat s 13 Akta adalah untuk membenarkan perayu, sebagai pemegang lesen, memasuki tanah tersebut bagi tujuan menyenggara, membaiki dan/atau menaik taraf pemasangan berlesen tersebut dan bukan untuk memberi kesan perubahan menyeluruh kepada pemasangan berlesen itu. Fotograf-fotograf yang dikemukakan sebagai keterangan membuktikan bahawa struktur yang dicadangkan dan takat penghantaran yang dipasang merentasi tanah tersebut sangat luas berbanding dengan yang sedia ada. Secara faktual penaikan taraf itu adalah melebihi setakat mana yang boleh diterima sebagai menaik taraf dalam maksud s 13 Akta dan oleh itu tidak ditafsirkan sebagai menaik taraf bagi tujuan s 13 Akta (lihat perenggan 51 & 58–59).

(5) (oleh **James Foong HMP,** menentang) Setelah memutuskan tidak memihak kepada perayu dalam keputusan mereka untuk mengeluarkan

notis kepada responden-responden di bawah s 13 Akta, persoalan tentang pampasan menjadi tidak relevan dan akademik (lihat perenggan 65).]

Notes

For cases on application for judicial review, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 191–197.

For cases on construction of statutes in general, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1836–2049.

For cases on rules of construction, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2013–2031.

Cases referred to

Cross v Kirklees Metropolitan Borough Council [1998] 1 All ER 564, CA (refd)

Detroit Edison Company v John Zoner 163 NWR 2d 496 (refd)

Edgcomb v Lower Valley Power and Light Inc 922 P 2d 850 (refd)

Mills v Meeking & Anor (1990) 91 ALR 16, HC (refd)

PP v Pengurus Hong Trading & Co [1985] 1 MLJ 366; [1984] 2 CLJ 415 (Rep), HC (refd)

Pearlman v Keepers and Governors of Harrow School [1979] QB 56, CA (refd)

R (on the application of Quintavalle) v Secretary of State for Health [2003] 2 All ER 113, HL (refd)

R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145, FC (refd)

Rolland v International Transmission Co 2008 Mich App Lexis 996 (refd)

S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204, FC (refd)

Sykt Perniagaan United Aces Sdn Bhd & Ors v Majlis Perbandaran Petaling Jaya [1997] 1 MLJ 394; [1996] 4 CLJ 301, FC (refd)

Tang Sung Mooi v Too Miew Kim [1994] 3 MLJ 117; [1994] 2 AMR 1799, SC (refd)

Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd [2000] 2 MLJ 133, CA (redf)

Transpower New Zealand Ltd v Taupo District Council [2008] NZRMA 41 (refd)

United States v 36 Acres of Land F Supp 2d 982 (refd)

Legislation referred to

Electricity Supply Act 1990 ss 13, 14(3), 16

Electricity Supply (Successor Company) Act 1990

Federal Constitution art 13

Interpretation Acts 1948 and 1967 s 17A

Interpretation of Legislation Act 1984 [AU] s 35(a)

Land Acquisition Act 1960

Resource Management Act 1991 [NZ]

Rules of High Court 1980 O 53 r 3

Cyrus Das (Steven Thiru and Shamsul Bahrin Manaf with him) (Shook Lin & Bok) for the appellant.
Malik Imtiaz Sarwar (William Leong and Neoh Hor Kee with him) (HC Tan & Zahani) for the respondents.

Augustine Paul FCJ:

[1] The facts of the case have been sufficiently dealt with in the judgment of my learned brother, James Foong FCJ and it is superfluous for me to repeat them.

[2] The appellant had been granted leave to appeal to the Federal Court on eight questions of law. They are as follows:

(1) whether s 13 of the Electricity Supply Act 1990 ('the Act') is subject to the implied limitation that not all manner of upgrading works may be carried out by Tenaga Nasional Bhd on existing installations under that provision?

(2) whether s 13 of the Act is subject to a qualitative assessment of the type of upgrading works intended to be carried out on existing installations so that 'major' works are to be excluded?

(3) whether the determination of whether the works are 'major' or not is suitable for decision by a court of law as opposed to the public body in whose technical judgment Parliament has reposed the carrying out of upgrading works?

(4) whether s 13 of the Act is limited in application to only upgrading works in the nature of repairs and maintenance?

(5) whether the public purpose factor necessitates that s 13 of the Act be read purposefully in order that the contemplated works could be carried out expeditiously in the public interest?

(6) whether the compensation payable to affected landowners under s 13 read with s 16 of the Act on a 'full compensation' basis is meant to be inferior to compensation payable under the Land Acquisition Act 1960?

(7) whether art 13 of the Federal Constitution is breached where the injury to property is caused by works authorised under a written law providing for 'full compensation' to affected landowners? and

(8) whether art 13 of the Federal Constitution is breached where the injury to land is an interference or 'deprivation' authorised by written law?

[3] As submitted by the appellant the questions may be classified as follows:

(a) the proper construction of s 13 of the Act; this is contained in question Nos 1–5; and

(b) the payment of compensation under s 13 read with s 16 of the Act and art 13 of the Federal Constitution. This is contained in question Nos 6–8.

[4] I shall now consider the two classifications.

THE FIRST CLASSIFICATION

[5] This relates essentially to the meaning to be accorded to the word 'upgrading' in s 13 of the Act which reads as follows:

> Whenever it is necessary so to do for the purpose of maintaining, repairing or upgrading any licensed installation or any part thereof, the licensee, or any person authorised by him in that behalf, may at all reasonable times enter upon any land on, under or over which supply lines have been laid, placed or carried, or upon which posts or other equipment have been erected, and may carry out all necessary repairs, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purpose, causing as little damage as possible and paying full compensation in accordance with section 16 to all persons interested for any damage that may be caused thereby for which compensation has not already been assessed under section 11.

[6] In order to ascertain whether the works carried out by the appellant amount to an 'upgrading' within the scope of s 13 of the Act it is first necessary to determine the meaning of the word. It is defined in the *Concise Oxford Dictionary* as follows:

> 1. Raise in rank etc 2. Improve (equipment, machinery, etc.) esp. by replacing components.

[7] The word as defined refers to the raising in rank or improvement of equipment, machinery etc especially by replacing components, obviously for the purpose of better or increased performance. However, the meaning does not appear to be subject to any limitation or qualification. That may require a wide interpretation to be given to the word which may, needless to say, cause problems and hardship to some. The critical issue for determination is whether the word 'upgrading' in s 13 of the Act must be accorded this meaning even though it may result in individual hardship.

[8] This raises the question of whether the meaning of the word 'upgrading' in s 13 of the Act is capable of being restricted in order to avoid the hardship. That brings into focus s 17A of the Interpretation Acts 1948 and 1967 ('s 17A') which reads as follows:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[9] It is thus abundantly clear that what must prevail is a construction that will promote the purpose of an Act. In this regard useful reference may be made to *Mills v Meeking & Anor* (1990) 91 ALR 16 where Dawson J in explaining s 35(a) of the Interpretation of Legislation Act of Victoria which is similar to s 17A said at pp 30–31:

> The literal rule of construction, whatever the qualifications with which it is expressed, must give way to a statutory injunction to prefer a construction which would promote the purpose of an Act to one which would not, especially where that purpose is set out in the Act. Section 35 of the Interpretation of Legislation Act must, I think, mean that the purposes stated in Part 5 of the Road Safety Act are to be taken into account in construing the provisions of that Part, *not only where those provisions on their face offer more than one construction, but also in determining whether more than one construction is open.* The requirement that a court look to the purpose or object of the Act is thus more than an instruction to adopt the traditional mischief or purpose rule in preference to the literal rule of construction. The mischief or purpose rule required an ambiguity or inconsistency before a court could have regard to purpose: *Miller v Commonwealth* [1904] 1 CLR 668 at p 674; *Wacal Developments Pty Ltd v Realty Development Pty Ltd* (1978) 20 ALR 621 at p 630. The approach required by s 35 needs no ambiguity or inconsistency; it allows a court to consider the purposes of an Act in determining whether there is more than one possible construction. Reference to the purposes may reveal that the draftsman has inadvertently overlooked something which he would have dealt with had his attention been drawn to it and if it is possible as a matter of construction to repair the defect, then this must be done. However, if the literal meaning of a provision is to be modified by reference to the purposes of the Act, the modification must be precisely identifiable as that which is necessary to effectuate those purposes and it must be consistent with the wording otherwise adopted by the draftsman. Section 35 requires a court to construe an Act, not to rewrite it, in the light of its purposes. (Emphasis added.)

[10] In commenting on provisions similar to s 17A in the Australian states, *Statutory Interpretation in Australia* by Pearce and Geddes (4th Ed) says at p 27:

> In the author's opinion, however, s 15AA requires the purpose or object to be taken into account if the meaning of the words, interpreted in the context of the rest of the Act is clear. When the purpose or object is brought into account, an alternative interpretation of the words may become apparent. And if one interpretation does not promote the purpose or object of an Act and another interpretation does so, the latter interpretation must be adopted.

[11] A matter of immediate concern is therefore the ascertainment of the purpose of the Act. There can be no dispute that s 13 of the Act merely authorises the doing of the acts specified therein for the purpose of the Act. The purpose can be gathered from the preamble to the Act which reads as follows:

> An Act to provide for the appointment and functions of a Director General of Electricity Supply, the supply of electricity at reasonable prices, the licensing of electrical installation and the control of electrical installation, plant and equipment with respect to matters relating to safety of persons and for purposes connected therewith.

[12] Thus the purpose of the Act is, inter alia, to ensure the supply of electricity at reasonable prices to the public at large. Where a purpose serves the general interest of the community it is a public purpose (see *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204). As the purpose of the Act is to serve the interests of the public in the supply of electricity it is for a public purpose. Where the public interest is involved the balance of convenience in favour of the public in general must be looked at more widely (see *Tenaga Nasional Bhd v Dolomite Industrial Park Sdn Bhd* [2000] 2 MLJ 133). Thus individual hardship that may arise in giving the necessary interpretation to a statutory provision cannot be a relevant matter for consideration.

[13] As *Principles of Statutory Interpretation* by GP Singh (10th Ed) says at pp 133–134:

> It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases. 'It is the duty of all courts of justice', said Lord Campbell, 'to take care for the general good of the community, that hard cases do not make bad law'.

[14] It is perhaps necessary to bear in mind the observation made in *State of Punjab v Okara Grain Buyers Syndicate Ltd, Okara* AIR 1964 SC 669 that a bare mechanical interpretation of the words and application of a legislative

intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. In *R (on the application of Quintavalle) v Secretary of State for Health* [2003] 2 All ER 113, Lord Bingham said at p 113:

> Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole and the statute as a whole should be read in the historical context of the situation which led to its enactment.

[15] It follows that s 13 of the Act must be read and understood in the context of the purpose for which it was enacted, that is to say, to serve the interests of the public in the supply of electricity at reasonable prices. There can be no dispute that the need for electricity supply will increase from time to time with the rising population and industrial development. Advances in science and technology may help to maintain prices at a reasonable level in the supply of electricity. Such needs can be met only with changes in the electrical installations which can be even of a very major nature. The unqualified use of the word 'upgrading' in s 13 of the Act supports the view that an upgrading exercise can go to any extent. If it was the intention of Parliament to limit the degree of 'upgrading' that can be carried out then words to achieve that object would have been used as in the case of the New Zealand electrical laws. The Resource Management Act 1991 of New Zealand is subject to district plans when electricity cables are sought to be laid for the conveying of electricity. In *Transpower New Zealand Ltd v Taupo District Council* [2008] NZRMA 41, the district plan for Taupo which specifically provided for only 'minor upgrading of existing support structure for conveying electricity' was in issue. It was held that the proposed tower extensions of up to 5.5 meters in height for the scheduled upgrading of the existing electricity transmission line was not a ' … minor upgrade … '. Thus as Baragwanath J said in that case:

> The decision whether an excess over these stipulated heights is more than 'minor' is a matter of evaluation containing a substantial element of factual judgment.

[16] The approach adopted in the restrictive interpretation of the New Zealand provision can be discerned with ease. While the New Zealand provision is limited to only 'minor upgrading' there is no such limitation or qualification to 'upgrading' in s 13 of the Act. The meaning of 'upgrading' in s 13 of the Act is therefore not a matter of factual determination having considered the materials or components to be added or changed. It is thus not subject to any qualification and may go to any extent even though it may cause individual hardship. The result is that any restriction imposed in the

meaning to be accorded to the word 'upgrading' in s 13 of the Act will conflict with the purpose of the Act in the supply of electricity to the public and thereby be in violation of s 17A.

[17] Be that as it may, a matter that requires to be addressed is whether it can be argued that the purpose of enacting s 13 of the Act is to give it a restricted meaning by the application of the principle of *noscitur a sociis* as the word 'upgrading' appears with two other words, that is to say, 'maintaining' and 'repairing'. The meanings of these two words in s 13 of the Act must be considered before resorting to the principle of *noscitur a sociis*. This is a necessary precondition to be satisfied before the principle of *noscitur a sociis* can be invoked. In this regard reference may be made to *Bindra's Interpretation of Statutes* (9th Ed) which says at p 677:

> The meaning of a word is to be judged by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. But before the principle of *noscitur a sociis* can be pressed into service, it must be shown that the words are employed in the same sense or that they are susceptible of analogous meaning (*Lokmat Newspapers Put Ltd v Shankar Prasad* [1999] 6 SCC 275).

[18] I will now consider the meanings of the three words in question in s 13 of the Act in order to determine whether they are analogous or similar in nature. The *Concise Oxford Dictionary* defines the word 'maintain' as:

> 4. Preserve or provide for the preservation of (a building, machine, road, etc) in good repair.

[19] And the word 'repair' as:

> 1. Restore to good condition after damage or wear. 2. Renovate or mend by replacing or fixing parts or by compensating for loss or exhaustion. 3. set right or make amends for (loss, wrong, error, etc.).

[20] And the word 'upgrade' as:

> raise in rank etc. 2. Improve (equipment, machinery, etc.), esp by replacing components.

[21] It must be observed that the meaning of the word 'maintain' carries with it the element of repair. This has been recognised in cases such as *Cross v Kirklees Metropolitan Borough Council* [1998] 1 All ER 564 where it was held that 'maintain' includes 'repair'. As 'maintain' and 'repair' have been enacted as separate items in s 13 of the Act the meaning of the word

'maintain' must be deemed to exclude the element of repair. It thus refers to only the act of supervising to ensure that a thing is preserved for the purpose for which it was designed. It therefore does not involve the carrying out of any physical work. The word 'repair' refers to the restoration of something to a good condition after it has been damaged. The amount of restoration work that is needed may vary from case to case. The word 'upgrade' is quite different from 'repair' as it refers to the raising in rank or improvement by replacing components, obviously, for the purpose of better performance. It will thus be observed that all the three words in s 13 of the Act carry separate and distinct meanings; each is different from the other. It cannot therefore be said that the meanings of the three words are analogous or similar. The result is that the principle of *noscitur a sociis* has no application in the determination of the meaning of the word 'upgrading' in s 13 of the Act. It must be added that even if it is held that the principle of *noscitur a sociis* is indeed applicable the resultant restricted meaning to be given to the word 'upgrading' will not have the effect of promoting the purpose underlying the Act with the result that the wider meaning to be accorded to the word must be adopted.

[22] I am therefore of the view that the word 'upgrading' in s 13 of the Act must be given its natural and ordinary meaning as defined in the *Concise Oxford Dictionary* to which reference has been made in an earlier part of this judgment. This meaning accords with the purpose of the Act.

[23] My response to the five questions under this classification shall therefore be as follows:

(a) Question No 1

Whether s 13 of the Act is subject to the implied limitation that not all manner of upgrading works may be carried out by Tenaga Nasional Bhd on existing installations under that provision?

[24] Section 13 of the Act is not subject to any implied limitation in carrying out any upgrading works on existing installations by Tenaga Nasional Bhd. It must, however, relate to the raising in rank or improvement of equipment, machinery etc especially by replacing components of electrical installations, obviously for the purpose of better or increased performance.

(b) Question No 2

Whether s 13 of the Act is subject to a qualitative assessment of the type of upgrading works intended to be carried out on existing installations so that 'major' works are to be excluded?

[25] Section 13 of the Act is not subject to any qualitative assessment of the type of upgrading works intended to be carried out on existing installations

with the result that 'major' works are not excluded.

(c) Question No 3

Whether the determination of whether the works are 'major' or not is suitable for decision by a court of law as opposed to the public body in whose technical judgment Parliament has reposed the carrying out of upgrading works?

[26] In view of the answers to question Nos 1 and 2 this question is not relevant and need not be answered.

(d) Question No 4

Whether s 13 of the Act is limited in application to only upgrading works in the nature of repairs and maintenance?

[27] In view of the answers to question Nos 1 and 2 this question is not relevant and need not be answered.

(e) Question No 5

Whether the public purpose factor necessitates that s 13 of the Act be read purposefully in order that the contemplated works could be carried out expeditiously in the public interest?

[28] The answer is in the affirmative in view of the purpose of the Act and the prevailing effect of s 17A.

[29] Having answered the questions it is appropriate to consider whether the proposed works to be undertaken by the appellants fall within the definition of 'upgrading' in s 13 of the Act. It is the intention of the appellants to replace the 33 kV transmission lines with more extensive 275 kV cables with different steel poles for the purpose of increasing the supply of electricity. In cases such as *United States v 36 Acres of Land* F Supp 2d 982 and *Edgcomb v Lower Valley Power and Light Inc* 922 P 2d 850 it was held that increasing the capacity of transmission lines is to be regarded as an upgrading exercise. In *Rolland v International Transmission Co* 2008 Mich App Lexis 996 it was held that upgrading may involve altering the pole structures carrying the transmission lines for the purpose of upgrading. The proposed works are therefore clearly an improvement by the replacement of components and is a raising in rank of the electricity cables and therefore fall within the definition of 'upgrading' in s 13 of the Act. This conclusion accords with the answers to question Nos 1 and 5.

THE SECOND CLASSIFICATION

[30] This relates to the payment of compensation under s 13 read with s 16 of the Act and art 13 of the Federal Constitution.

[31] The appellants have conceded that full compensation as per the terms of the Land Acquisition Act 1960 should be payable to the landowners to the extent of the loss or injury suffered by them. It was also conceded that the affected landowners would be entitled to full compensation for the loss of use of their lands to the extent of the loss pursuant to art 13 of the Federal Constitution.

[32] My response to the three questions under this classification shall therefore be as follows:

(f) Question No 6

Whether the compensation payable to affected landowners under s 13 read with s 16 of the Act is on a 'full compensation' basis is meant to be inferior to compensation payable under the Land Acquisition Act 1960?

[33] In view of the concession made by the appellant this question is academic and need not be answered.

(g) Question No 7

Whether art 13 of the Federal Constitution is breached where the injury to property is caused by works authorised under written law providing for 'full compensation' to affected landowners?

[34] In view of the concession made by the appellant this question is academic and need not be answered.

(h) Question No 8

Whether art 13 of the Federal Constitution is breached where the injury to land is an interference or 'deprivation' authorised by written law?

[35] In view of the concession made by the appellant this question is academic and need not be answered.

[36] My learned brother, Richard Malanjum CJ (Sabah and Sarawak) has read this judgment in its draft form and has expressed agreement with it. In the upshot the appeal is allowed with costs. The deposit is to be refunded to the appellant.

James Foong FCJ:

INTRODUCTION

[37] The appellant was granted leave by the Federal Court to pose eight

questions of law. During the hearing of this appeal, appellant's counsel submitted that these questions can be condensed to two. I agree with him. The first and the principal question requires this court to interpret the word 'upgrading' in s 13 of the Electricity Supply Act 1990 ('the Act'). The second relates to the payment of compensation under s 13 read with s 16 of the Act and art 13 of the Federal Constitution. But before I proceed with this, knowledge of the factual background of this case is necessary.

[38] The appellant is a licencee under s 9 of the Act and is the successor of Lembaga Letrik Negara ('LLN') by virtue of the Electricity Supply (Successor Company) Act 1990. As this is the case, there is no dispute that the appellant is to be treated as an 'administrative body' whose decision is subject to judicial review under O 53 r 3 of the Rules of the High Court ('RHC').

[39] The respondents by themselves and by those they represent are proprietors and/or occupiers of respective plots of land (collectively referred to as 'the said land') in a new village known as Kampung Sungei Terentang, Rawang, Selangor ('new village'). According to them, they and/or their predecessors had settled in this new village since 1940 under the British Colonial Administrative Directive known as the Briggs Plan. Temporary occupation licences were issued to them to occupy the said land. Sometime in 1974, LLN installed steel poles on the said land to carry a 33 kV transmission line which ran across the new village. No one in the village objected to this at the material time.

[40] In 1986, the State Government of Selangor alienated the said land to respondents but in its document of title there is no endorsement of any agreement (technically known as 'wayleave agreement') between the respondents and LLN to allow the electricity supply line to run across the said land.

[41] Around 2005, the appellant decided to implement a project known as the Central Area Reinforcement Project ('CAR project') to increase electricity supply to Kuala Lumpur and the Klang Valley. This was undertaken as a result of a severe electricity disruption on the 13 January 2005 which affected the central region of Peninsular Malaysia. To implement this project, a high voltage grid with a capacity of 270 kV covering a distance of 60km from a place called Bukit Tarek to another known as Cudadak had to be installed. A section of the route for this grid runs through the new village along the same path as the existing 33 kV transmission line. Presently, the appellant has completed this project at both ends except for a 1.5km stretch through the new village.

[42] The owners and residents of the new villager protested against this proposal and implementation. They attempted to persuade the appellant to find an alternative route. Unfortunately, after many meetings between the parties, political party representatives and the state authority, this request was turned down. Eventually, in June 2007, the appellant issued a notice in pursuant to s 13 of the Act to the respondents.

[43] This notice reads:

1. Sila ambil perhatian bahawa kami Tenaga Nasional Berhad yang beralamat di 129, Jalan Bangsar, Peti Surat 11003, 50732 Kuala Lumpur adalah pemegang lesen yang bertarikh 30hb. Ogos 1990 di bawah Akta Bekalan Elektrik 1990 berhasrat memasuki tanah tersebut yang mana Tenaga Nasional Berhad mempunyai pepasangan, hak izin lalu dan kepentingan sedia ada bagi maksud:

   (a) Melaksanakan kerja-kerja menaiktaraf talian penghantaran daripada 33kV kepada 275 kV serta merentang dan mengendalikan talian bekalan elektrik didalam kawasan rentis dan membuat serta memelihara sebuah lorong selebar 5 kaki bagi pemeriksaan talian tersebut.

   (b) Menggunakan jalan-jalan masuk/lorong-lorong yang ada bagi menyempurnakan segala kerja yang tersebut di atas.

   (c) Melaksanakan kerja-kerja penyelenggaraan, pembaikan dan peningkatan pepasangan elektrik daripada semasa ke semasa.

2. Tenaga Nasional Berhad akan melaksanakan kerja-kerja tersebut di atas pada 6 Julai 2007 iaitu selepas 14 hari daripada tarikh notis ini.

3. Pentadbir Tanah Daerah Gombak akan menetapkan satu tarikh kemudian bagi taksiran pampasan bersama dengan pihak tuan.

4. Tuan akan dibayar pampasan yang sepatutnya bagi apa-apa kerosakan yang dilakukan.

Translated into English:

1. Please take notice that we, Tenaga Nasional Bhd, whose address is at 129, Jalan Bangsar, Peti Surat 11003, 50732 Kuala Lumpur being the licencee dated 30 August 1990 under the Electricity Supply Act 1960, intends to enter upon the said land which Tenaga Nasional Bhd has installation, a wayleave right and an existing interest for the purpose of:

   (a) carrying out upgrading works on the transmission lines from 33kV to 275 kV by stretching and connecting the electricity supply line in

A the rentice area as well as constructing and maintaining a lane of 5 feet wide for the particular line inspection;

(b) using the existing roads/lanes for completing all the above works;

B (c) carrying out maintenance works, repairing and upgrading of the electrical installation from time to time.

2. Tenaga Nasional Bhd will be carrying out the above works on 6 July 2007 which is 14 days from the date of this notice.

C 3. The land administrator of Gombak will later fix a date with you for the purpose of assessing compensation.

4. The land administrator of Gombak will later fix a date with you for the purpose of assessing compensation.

D

[44] And s 13 of the Act provides:

> E Whenever it is necessary so to do for the purpose of maintaining, repairing or upgrading any licensed installation of any part thereof, the licensee, or any person authorised by him in that behalf, may at all reasonable times enter upon any land on, under or over which supply lines have been laid, placed or carried, or upon which posts or other equipment have been erected, and may carry out all necessary repairs, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purpose, causing as little damage as possible F and paying full compensation in accordance with section 16 to all persons interested for any damage that may be caused thereby for which compensation has not already been assessed under section 11.

G **[45]** Responding to this, the respondents filed an application in the High Court at Kuala Lumpur for a judicial review under O 53 r 3 of the RHC of the appellant's decision to issue the said notice under s 13 of the Act. In this application they sought:

H (a) an order of certiorari to quash the decision of the respondent in issuing the notice under s 13 of the Act;

(b) a declaration that the notice issued under s 13 of the Act is null and void; and

I (c) an injunction restraining the appellant from carrying out the works proposed in the notice issued under s 13 of the Act.

[46] The pertinent ground raised by the respondents in support of this application is that the appellant had intentionally under the guise of

'upgrading' the existing transmission line attempted to enter into the said land with an ulterior motive to acquire it and no compensation for such acquisition is ever adequate.

[47] The High Court, subsequent to granting leave to file this application for judicial review, rejected it after an inter parte hearing. The reason (relevant to the first question posed to this court) is this:

> The wording of s 13 is clear, the exercise of the respondent (the appellant before this court) is only conditioned for the purpose of maintaining, repairing or upgrading any license installation or any part thereof. In the absence of any conclusive evidence tendered by the applicants (the respondent before this court) showing otherwise, this court (is) left with no room but to accept that the current posts were installed validly. In this premise, the natural conclusion would be that the issuance of the s 13 notice was perfectly within the procedure envisaged for its current purpose of upgrading the transmission line from 33kV to 275 kV.

[48] Dissatisfied with this decision, the respondents lodged an appeal to the Court of Appeal. The Court of Appeal reversed the decision of the High Court and granted the respondents an order for certiorari to quash the decision of the appellant in issuing the notice under s 13 of the Act. The ground proffered by the Court of Appeal relevant to the first question posed to this court is this:

> Let us analyse the neutral evidence adduced which comes in the form of the tendered pictures (RR 550–554). These pictures highlight the difference in sizes between an LLN 33 kV post (an original post) and the gigantic new TNB 275 kV transmission tower. It would be impossible to put on paper the indescribable and perpetual fear the appellants would have to undergo, either imagined or real, if they have to live under the giant pylons that overhang their houses day in and day out after the construction is completed. Needless to say prior to the completion of these structures the appellants would already have a taste of the future bitter sufferings when they have to put up with the huge machineries and other infractions by the workers of the respondent. From pp 555–562 are seen the effect of fallen pylons and the hazard that go with it. Evidence adduced also confirmed the negative medical effect on people, especially children who are more susceptible to leukemia and like diseases, when bombarded by the flow of electricity passing over their houses …
>
> With such a mega project in the offing, and the eventual repercussion pervading the lives of the appellants being so major, this panel was unable to agree with the stance of the respondent or the finding of the learned judge. This was not just tightening of the loose screws repainting the posts, replacing the aging posts with new but similar types of structure, which could be accepted as upgrading, but an exercise that would witness a major emplacement of the transmission lines together with the structures holding them, and affecting the area involved in no uncertain terms. How could it be construed that the exercise of the respondent was to repair and maintain the existing posts in the ordinary sense, when the new

superstructures, which would radically and fundamentally alter the landscape are now the permanent features (*ACT Construction Ltd v Customs and Excise Commissioners* [1981] 1 WLR 1542). The previous posts would see no repairs being undertaken but totally dismantled and replaced, and a large area of the appellants' land by necessity, encroached when the mega project has been completed. A major upheaval in the health and lives of the appellants would undoubtedly be witnessed thereafter.

ANALYSIS

[49] To begin, I must be reminded that the respondents' application before the High Court is for judicial review on a decision made by an administrative body. It is common ground between the parties that in such proceedings, the court will not conduct an examination into the merit of the decision but rather to the decision making process unless the decision is illegal, irrational, made with procedural impropriety and disproportionate — *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145. As both the High Court and the Court of Appeal had adhered to this principle when considering this case there is no issue of the courts below applying the wrong principle of law.

[50] To justify the appellant's right to enter into the said land under s 13 of the Act, the appellant had to convince the court that the proposed work to be undertaken on the said land was for the purpose of 'upgrading' the existing facility since it is neither for 'maintenance' or 'repairs' (the other two purposes provided by s 13 of the Act). Towards this, appellants' counsel encouraged this court to adopt a purposive approach in our interpretation by giving the word 'upgrading' a broad and wide meaning. In support of this contention he cited to us a number of American cases where the courts have been liberal with their interpretation of easement rights of utility companies to build and enhance their electricity lines over individual property rights — *Detroit Edison Company v John Zoner* 163 NWR 2d 496; *United States v 36 Acres of Land* F Supp 2d 982; *Edgcomb v Lower Valley Power and Light Inc* 922 P 2d 850.

[51] Further, he also submitted that this word 'upgrading' should stand on its own and should not be associated with the other two purposes: 'maintaining' and 'repair' found in s 13 of the Act. Though upgrading may involve elements of repair and maintenance but because the preceding words of 'for the purpose' it should be read on its own.

[52] My approach to this question is to first examine the major elements in s 13 of the Act. This section firstly imposes pre-conditions on a licencee to enter into any land where there is a licenced installation and this is: the

necessity to do so. And this necessity must be for the purpose of maintenance, repairs and upgrading of the licenced installation. After that, upon entry, the licencee may carry out necessary repairs on the said installation and in the course of this fell or lop trees, remove vegetation and do any other thing necessary for this purpose. And finally, the licencee should cause as little damage as possible in the course of their work and if there is any damage caused, to compensate the persons affected.

[53] Since the meaning of the word 'upgrading' in s 13 of the Act is now in contention, I must point out at the outset that for the purpose of interpretation of however simple a word is, it is 'a matter of law' (*Pearlman v Keepers and Governors of Harrow School* [1979] QB 56 at p 67). For this, I turn first to the commonly used *Concise Oxford Dictionary* for the meaning of the word 'upgrade'. It reads: '1. raise in rank etc. 2. improve (equipment, machinery, etc.) esp. by replacing components'. Though this is the true meaning of the word can we accept that this applies without limitation? Does it mean that as long as there is a rise in the rank of a thing or an improvement thereto, no matter to what extent or degree, it would be considered as an upgrade or upgrading? More relevant to the facts of this case, are we prepared to accept that a new transmission line with an increase capacity of seven times that of the current line and requiring a gigantic steel structure with a wide base to hold it up at regular intervals upgrading? If we are to look for an answer to these questions, it must, in my opinion, be narrowed down to a matter of degree.

[54] In some jurisdictions such as New Zealand, there are some district legislations which provide that upgrading of existing electrical power lines be limited to only 'minor upgrading' — see *Transpower New Zealand Ltd v Taupo District Council* [2008] NZRMA 41. But even over this, I observe, the requirement of degree to be determined in order to justify 'minor'. This can be seen from the judgment of Baragwanath J in *Transpower New Zealand Ltd v Taupo District Council* when he said:

> The decision whether an excess over those stipulated heights is more than 'minor' is a matter of evaluation containing a substantial element of factual judgment. The two bodies entrusted by Parliament with authority to make factual judgments are, at first instance, the council and on appeal the environment court. The High Court can interfere only if the decision of the environment court misconstrues the law or reaches a factual conclusion that is irrational.

[55] I find this approach appealing. The meaning of upgrading must therefore be a matter of factual determination. In the event of a dispute between the parties then it is for the court to make a factual judgment having taken into account the materials or things to be added or changed. But when considering this, one must bear in mind that 'upgrading' in s 13 of the Act

must be read in the context of the two other purposes mentioned in the same section: 'maintaining' and 'repairing'. It is my considered view that together these three words share a common characteristic: to do something to an existing matter. They should therefore not be read in isolation but in the context of each other since they are shapes of the same colour. The link between these three words in this section suggests that they should be treated in the same sense — *capulatio verborum indicat acceptationem in eodem sensu*. Consequently, the established principle in the rules of construction noscitur a sociis applies ie 'the meaning of two or more words which are receptive to similar meaning can be considered by consideration of the company in which the words appear and is associated with' — see *Sykt Perniagaan United Aces Sdn Bhd & Ors v Majlis Perbandaran Petaling Jaya* [1997] 1 MLJ 394; [1996] 4 CLJ 301. I disagree with appellant's counsel's contention that the preceding words 'for the purpose' found in s 13 of the Act imply that the three purposes: maintaining, repairing and upgrading stand on their own. My view is that since these preceding words are general words which follow particular and specific words of one genus then it is presumed to be restricted to the same genus as the particular words. Meaning: the general expression is to be read as comprehending things of the same kind as that designated by the preceding particular expression unless there is something to show that a wider sense was intended — see *Public Prosecutor v Pengurus Hong Trading & Co* [1985] 1 MLJ 366 at p 367; [1984] 2 CLJ 415 (Rep) at p 417:

> I am further of the view that the words 'other matter' found in reg 3(v)(ii) of the regulation should be read ejusdem generis with 'Prussian blue, lead or compounds of lead' which according to the deputy public prosecutor are poisonous or deleterious to the human body. According to a well established rule of construction of statutes, general terms following particular ones apply only to such persons or things as are ejusdem generis with those comprehended in the language of the legislature. In other words the general expression is to be read as comprehending things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended.

[56] Further, when one interprets a particular word in a certain section of a legislation, it is imperative to look at the intention of the provision as a whole rather than in isolation — see *Tang Sung Mooi v Too Miew Kim* [1994] 3 MLJ 117; [1994] 2 AMR 1799. In this instance, the intention of s 13 of the Act is to allow the appellant, as licencee, to enter into the said land by necessity for the purpose of maintaining, repairing or upgrading the licenced installation; it is not for effecting an entire change to the licenced installation.

[57] The High Court did not fully consider the facts of this case from this angle. It accepted a face value the appellant's proposal for the CAR project on the said land as falling within the meaning of the word 'upgrading' found in s 13 of the Act. The Court of Appeal however discussed this in depth and

came to a conclusion that the degree of upgrading of the existing line should only be limited to 'just tightening of loose screws, repainting the posts, replacing the aging posts with new but similar type of structure'.

[58] Judging from the photographs tendered as evidence, the proposed structure and the extent of the transmission line to be laid across the said land is exceedingly extensive as compared to the existing. The current two simple H steel poles holding the 33 kV transmission line have be removed and replaced by a gigantic steel structure with a broad base reverted to the ground at demarcated intervals across the new village to support an even wider and more extensive 275 kV cables. Judging from the size of this steel structure, no wonder certain houses on the said land along the route of the transmission line would have to be completely demolished to make way. The reason is simple: The average area for each plot of the said land is only approximately 3000 sq ft. So in certain areas the entire plot would be used to accommodate this colossal structure not forgetting the provision of a five foot wide pathway beneath the line for ready access for repairs and maintenance of the new line. So obviously this is not something to be done to an existing structure. This involves the removal of the entire existing structure and be replaced by an enormous configuration to uphold weightier transmission cables than the present.

[59] Factually, I agree with the Court of Appeal that this does not constitute upgrading. The proposed work is an installation of something totally new. It exceeds the degree that can be considered as upgrading by the common sense of the word read in the context of the other two purposes: maintaining and repairing. Though in upgrading one may add something new to it but here the extent is far too substantial to qualify falling within this category. I do not agree to the Court of Appeal's observation that upgrading in s 13 of the Act is only limited to tightening loose screws, repainting or replacing of existing electrical posts. Each case has to be considered on its own facts and it is impossible to lay down any universal standard to gauge degree. But in the circumstances of this case, the so called upgrading far exceeds the degree that I am prepared to accept as upgrading within the meaning of s 13 of the Act.

COMPETING INTEREST

[60] Both parties had attempted to argue on the issue of competing interest: that of the individual rights of the respondents against the wider interest of the community for the demand of electrical power to propel development and which one is paramount over the other. But in my opinion this is not the forum to debate and decide on this. The appellant is adequately armed with relevant provisions in the Act to carry out their proposed task if

they elect to do so such as s 14(3) of the Act which says that the appellant can acquire such land as required for the purpose intended and pay compensation accordingly. It is not for this court to question such power bestowed on them by the Legislature. I am here only to determine the meaning and extent of the word 'upgrading' in s 13 of the Act according to the facts of this case and for this, I have expressed my view.

PAYMENT OF COMPENSATION

[61] The second question posed to this court relates to the payment of compensation under s 13 read with s 16 of the Act and art 13 of the Federal Constitution. According to appellant's counsel this question arose from a passage in the judgment of the Court of Appeal where it says:

> This subtle and unconscionable way of driving and depriving the appellants of their property, hence (sic) in effect an acquisition of their land by the respondent (a power exercisable only by the state authority), surely would contravene their constitutional rights (art 13 of the Federal Constitution).

[62] The appellant took issue that by this statement the Court of Appeal has failed to consider art 13 of the Federal Constitution and the adequate compensation provided to the affected party under s 13 read with s 16 of the Act.

[63] Article 13 of the Federal Constitution provides:

(1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[64] And the compensation provision in s 13 of the Act reads:

> May at all reasonable times enter upon any land on, under or over which supply lines have been laid, placed or carried, or upon which posts or other equipment have been erected, and may carry out all necessary repairs, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purpose, causing as little damage as possible and paying full compensation in accordance with section 16 to all persons interested for any damage that may be caused thereby for which compensation has not already been assessed under section 11.

[65] As I have effectively ruled against the appellant in their decision to issue the notice to the respondents under s 13 of the Act, this second question on compensation becomes irrelevant and academic. Thus, there is no

necessity for me to dwell into it.

CONCLUSION

[66] For reasons aforesaid, I would dismiss this appeal with costs to the respondents. Deposit for this appeal to the respondents towards account of taxed costs.

Appeal dismissed with costs.

Reported by Kohila Nesan